

## SENATE BILL NO. 295

INTRODUCED BY J. KEANE

A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING A MEMBER OF THE LEGISLATURE WHO IS ALSO A VESTED MEMBER OF CERTAIN MONTANA PUBLIC EMPLOYEES' RETIREMENT SYSTEMS OR PLANS TO APPLY FOR AND RECEIVE RETIREMENT BENEFITS WHILE STILL SERVING AS A MEMBER OF THE LEGISLATURE AND WITHOUT A MINIMUM BREAK IN SERVICE; PROHIBITING CERTAIN RETIREES FROM ACCRUING ADDITIONAL RETIREMENT BENEFITS AS A RESULT OF SERVING IN THE LEGISLATURE; AND AMENDING SECTIONS 19-2-303, 19-2-908, 19-3-412, 19-3-1106, 19-7-1101, AND 19-13-301, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**NEW SECTION. Section 1. Retirement benefits for members of legislature.** (1) (a) Subject to the provisions of subsection (2), a legislator who is also a vested member of a system enumerated in 19-2-302 may file an application for retirement benefits as otherwise required by the provisions of the retirement system of which the legislator is a member.

(b) A legislator who applies for retirement benefits as authorized by this section:

(i) is not subject to any minimum break in service to be eligible to receive the retirement benefit to which the legislator is entitled; and

(ii) subject to subsection (3), may continue to serve and may subsequently serve in the legislature.

(2) A member of the legislature who is also a vested member of a system enumerated in 19-2-302, for the purposes of determining and paying the legislator's retirement benefit, is considered to have terminated service on the member's termination or retirement date stated in the application for retirement benefits.

(3) (a) A legislator who elects to file an application for retirement benefits under this section may not earn membership service, service credit, or compensation for purposes of calculating highest average compensation or final average compensation, as defined under the provisions of the appropriate retirement system, for any subsequent time the legislator serves in the legislature after the legislator's termination or retirement date stated in the application occurs.

(b) Compensation earned for legislative service after the retirement date stated in the application is not subject to employer or employee contributions.

1

2           **Section 2.** Section 19-2-303, MCA, is amended to read:

3           **"19-2-303. Definitions.** Unless the context requires otherwise, for each of the retirement systems  
4 subject to this chapter, the following definitions apply:

5           (1) "Accumulated contributions" means the sum of all the regular and any additional contributions made  
6 by a member in a defined benefit plan, together with the regular interest on the contributions.

7           (2) "Active member" means a member who is a paid employee of an employer, is making the required  
8 contributions, and is properly reported to the board for the most current reporting period.

9           (3) "Actuarial cost" means the amount determined by the board in a uniform and nondiscriminatory  
10 manner to represent the present value of the benefits to be derived from the additional service to be credited  
11 based on the most recent actuarial valuation for the system and the age, years until retirement, and current salary  
12 of the member.

13           (4) "Actuarial equivalent" means a benefit of equal value when computed upon the basis of the mortality  
14 table and interest rate assumptions adopted by the board.

15           (5) "Actuarial liabilities" means the excess of the present value of all benefits payable under a defined  
16 benefit retirement plan over the present value of future normal costs in that retirement plan.

17           (6) "Actuary" means the actuary retained by the board in accordance with 19-2-405.

18           (7) "Additional contributions" means contributions made by a member of a defined benefit plan to  
19 purchase various types of optional service credit as allowed by the applicable retirement plan.

20           (8) "Annuity" means:

21           (a) in the case of a defined benefit plan, equal and fixed payments for life that are the actuarial equivalent  
22 of a lump-sum payment under a retirement plan and as such are not benefits paid by a retirement plan and are  
23 not subject to periodic or one-time increases; or

24           (b) in the case of the defined contribution plan, a payment of a fixed sum of money at regular intervals.

25           (9) "Benefit" means:

26           (a) the service retirement benefit, early retirement benefit, or disability retirement or survivorship benefit  
27 payment provided by a defined benefit retirement plan; or

28           (b) a payment or distribution under the defined contribution retirement plan, including a disability payment  
29 under 19-3-2141, for the exclusive benefit of a plan member or the member's beneficiary or an annuity purchased  
30 under 19-3-2124.

1 (10) "Board" means the public employees' retirement board provided for in 2-15-1009.

2 (11) "Contingent annuitant" means a person designated to receive a continuing monthly benefit after the  
3 death of a retired member.

4 (12) "Covered employment" means employment in a covered position.

5 (13) "Covered position" means a position in which the employee must be a member of the retirement  
6 system except as otherwise provided by law.

7 (14) "Defined benefit retirement plan" or "defined benefit plan" means a plan within the retirement  
8 systems provided for pursuant to 19-2-302 that is not the defined contribution retirement plan.

9 (15) "Defined contribution retirement plan" or "defined contribution plan" means the plan within the public  
10 employees' retirement system established in 19-3-103 that is provided for in chapter 3, part 21, of this title and  
11 that is not a defined benefit plan.

12 (16) "Department" means the department of administration.

13 (17) "Designated beneficiary" means the person designated by a member or payment recipient to receive  
14 any survivorship benefits, lump-sum payments, or benefit from a retirement account upon the death of the  
15 member or payment recipient, including annuities derived from the benefits or payments.

16 (18) "Disability" or "disabled" means a total inability of the member to perform the member's duties by  
17 reason of physical or mental incapacity. The disability must be incurred while the member is an active member  
18 and must be one of permanent duration or of extended and uncertain duration, as determined by the board on  
19 the basis of competent medical opinion.

20 (19) "Early retirement benefit" means the retirement benefit payable to a member following early  
21 retirement and is the actuarial equivalent of the accrued portion of the member's service retirement benefit.

22 (20) "Employee" means a person who is employed by an employer in any capacity and whose salary is  
23 being paid by the employer or a person for whom an interlocal governmental entity is responsible for paying  
24 retirement contributions pursuant to 7-11-105.

25 (21) "Employer" means a governmental agency participating in a retirement system enumerated in  
26 19-2-302 on behalf of its eligible employees. The term includes an interlocal governmental entity identified as  
27 responsible for paying retirement contributions pursuant to 7-11-105.

28 (22) "Essential elements of the position" means fundamental job duties. An element may be considered  
29 essential because of but not limited to the following factors:

30 (a) the position exists to perform the element;

1 (b) there are a limited number of employees to perform the element; or

2 (c) the element is highly specialized.

3 (23) "Fiscal year" means a plan year, which is any year commencing with July 1 and ending the following  
4 June 30.

5 (24) "Inactive member" means a member who terminates service and does not retire or take a refund of  
6 the member's accumulated contributions.

7 (25) "Internal Revenue Code" has the meaning provided in 15-30-101.

8 (26) "Member" means either:

9 (a) a person with accumulated contributions and service credited with a defined benefit retirement plan  
10 or receiving a retirement benefit on account of the person's previous service credited in a retirement system; or

11 (b) a person with a retirement account in the defined contribution plan.

12 (27) "Membership service" means the periods of service that are used to determine eligibility for  
13 retirement or other benefits.

14 (28) (a) "Normal cost" or "future normal cost" means an amount calculated under an actuarial cost  
15 method required to fund accruing benefits for members of a defined benefit retirement plan during any year in  
16 the future.

17 (b) Normal cost does not include any portion of the supplemental costs of a retirement plan.

18 (29) "Normal retirement age" means the age at which a member is eligible to immediately receive a  
19 retirement benefit based on the member's age, length of service, or both, as specified under the member's  
20 retirement system, without disability and without an actuarial or similar reduction in the benefit.

21 (30) "Pension" means benefit payments for life derived from contributions to a retirement plan made from  
22 state- or employer-controlled funds.

23 (31) "Pension trust fund" means a fund established to hold the contributions, income, and assets of a  
24 retirement system or plan in public trust.

25 (32) "Plan choice rate" means the amount of the employer contribution as a percentage of payroll covered  
26 by the defined contribution plan members that is allocated to the public employees' retirement system's defined  
27 benefit plan pursuant to 19-3-2117 and that is adjusted by the board pursuant to 19-3-2121 to actuarially fund  
28 the unfunded liabilities and the normal cost rate changes in a defined benefit plan resulting from member  
29 selection of the defined contribution plan.

30 (33) "Regular contributions" means contributions required from members under a retirement plan.

1 (34) "Regular interest" means interest at rates set from time to time by the board.

2 (35) "Retirement" or "retired" means the status of a member who has:

3 (a) terminated from service; and

4 (b) received and accepted a retirement benefit from a retirement plan.

5 (36) "Retirement account" means an individual account within the defined contribution retirement plan  
6 for the deposit of employer and member contributions and other assets for the exclusive benefit of a member of  
7 the defined contribution plan or the member's beneficiary.

8 (37) "Retirement benefit" means:

9 (a) in the case of a defined benefit plan, the periodic benefit payable as a result of service retirement,  
10 early retirement, or disability retirement under a defined benefit plan of a retirement system. With respect to a  
11 defined benefit plan, the term does not mean an annuity.

12 (b) in the case of the defined contribution plan, a benefit as defined in subsection (9)(b).

13 (38) "Retirement plan" or "plan" means either a defined benefit plan or a defined contribution plan under  
14 one of the public employee retirement systems enumerated in 19-2-302.

15 (39) "Retirement system" or "system" means one of the public employee retirement systems enumerated  
16 in 19-2-302.

17 (40) "Service" means employment of an employee in a position covered by a retirement system.

18 (41) "Service credit" means the periods of time for which the required contributions have been made to  
19 a retirement plan and that are used to calculate retirement benefits or survivorship benefits under a defined  
20 benefit retirement plan.

21 (42) "Service retirement benefit" means the retirement benefit that the member may receive at normal  
22 retirement age.

23 (43) "Statutory beneficiary" means the surviving spouse or dependent child or children of a member of  
24 the highway patrol officers', municipal police officers', or firefighters' unified retirement system who are statutorily  
25 designated to receive benefits upon the death of the member.

26 (44) "Supplemental cost" means an element of the total actuarial cost of a defined benefit retirement plan  
27 arising from benefits payable for service performed prior to the inception of the retirement plan or prior to the date  
28 of contribution rate increases, changes in actuarial assumptions, actuarial losses, or failure to fund or otherwise  
29 recognize normal cost accruals or interest on supplemental costs. These costs are included in the unfunded  
30 actuarial liabilities of the retirement plan.

(45) "Survivorship benefit" means payments for life to the statutory or designated beneficiary of a deceased member who died while in service under a defined benefit retirement plan.

(46) "Termination of employment", "termination from employment", "terminated employment", "terminated from employment", "terminate employment", or "terminates employment" means that:

(a) there has been a complete severance of a covered employment relationship by the positive act of either the employee, the employer, or both; and

(b) the member is no longer receiving compensation for covered employment, other than any outstanding lump-sum payment for compensatory leave, sick leave, or annual leave.

(47) "Termination of service", "termination from service", "terminated from service", "terminated service", "terminating service", or "terminates service", except as provided in [section 1], means that:

(a) there has been a complete severance of a covered employment relationship by the positive act of either the employee, the employer, or both for at least 30 days;

(b) the member is no longer receiving compensation for covered employment; and

(c) the member has been paid all compensation for compensatory leave, sick leave, or annual leave to which the member was entitled. For the purposes of this subsection (47), compensation does not mean compensation as a result of a legal action, court order, or settlement to which the board was not a party.

(48) "Unfunded actuarial liabilities" or "unfunded liabilities" means the excess of a defined benefit retirement plan's actuarial liabilities at any given point in time over the value of its cash and investments on that same date.

(49) "Vested account" means an individual account within a defined contribution plan that is for the exclusive benefit of a member or the member's beneficiary. A vested account includes all contributions and the income on all contributions in each of the following accounts:

(a) the member's contribution account;

(b) the vested portion of the employer's contribution account; and

(c) the member's account for other contributions.

(50) "Vested member" or "vested" means:

(a) with respect to a defined benefit plan, a member or the status of a member who has at least 5 years of membership service; or

(b) with respect to the defined contribution plan, a member or the status of a member who meets the minimum membership service requirement of 19-3-2116.

1 (51) "Written application" or "written election" means a written instrument, prescribed by the board or  
2 required by law, properly signed and filed with the board, that contains all required information, including  
3 documentation that the board considers necessary."  
4

5 **Section 3.** Section 19-2-908, MCA, is amended to read:

6 **"19-2-908. Time of commencement of benefit -- rulemaking.** (1) (a) The board shall grant a benefit  
7 to any active or inactive member who is vested, or the member's statutory or designated beneficiary, who has  
8 fulfilled all eligibility requirements, terminated service, and filed the appropriate written application with the board.  
9 However, the board may, on its own accord and without a written application, begin benefit payments to a  
10 member or beneficiary in order to comply with section 401(a)(9) of the Internal Revenue Code.

11 (b) A member may apply for retirement benefits before termination from employment, but  
12 commencement of the benefits must be as provided in this section.

13 (2) (a) Except as provided in subsection (2)(b) or (2)(c), the service retirement benefit may commence  
14 on the first day of the month following the eligible member's last day of membership service or, if requested by  
15 the inactive member in writing, on the first day of a later month following filing of the written application.

16 (b) ~~If Except as provided in subsection (2)(c), if an elected official's term of office expires before the 15th~~  
17 ~~day of the month, the official may elect that service retirement benefits from a defined benefit plan commence~~  
18 ~~on the first day of the month following the official's last full month in office. An official electing this option shall file~~  
19 ~~a written application with the board. An official electing this option may not earn membership service, service~~  
20 ~~credit, or compensation for purposes of calculating highest average compensation or final average compensation,~~  
21 ~~as defined under the provisions of the appropriate retirement system, in the partial month ending the official's~~  
22 ~~term, and compensation earned in that partial month is not subject to employer or employee contributions.~~

23 (c) If a legislator files an application for retirement benefits pursuant to [section 1] and the termination  
24 or retirement date stated in the legislator's application for benefits occurs prior to the 15th day of the month, the  
25 legislator may elect that retirement benefits from a defined benefit plan commence on the first day of the month  
26 in which the termination or retirement date occurs. A legislator who elects this option shall file a written application  
27 with the board. A legislator who elects this option may not earn membership service, service credit, or  
28 compensation for purposes of calculating highest average compensation or final average compensation, as  
29 defined under the provisions of the retirement system of which the legislator is a member, in the partial month  
30 in which the termination or retirement date occurs, and compensation earned in that partial month is not subject

1 to employer or employee contributions.

2 (3) (a) Subject to the provisions of subsection (3)(b), the disability retirement benefit payable to a  
3 member must commence on the day following the member's termination from employment.

4 (b) The guaranteed annual benefit adjustment payable pursuant to 19-3-1605, 19-5-901, 19-6-710,  
5 19-6-711, 19-7-711, 19-8-1105, 19-9-1009, 19-9-1010, 19-9-1013, 19-13-1010, and 19-13-1011 may not be paid  
6 retroactively. The guaranteed annual benefit adjustment begins on January 1 of the year after the member has  
7 received an amount equal to or greater than 12 months of disability benefit payments.

8 (4) Monthly survivorship benefits from a defined benefit plan must commence on the day following the  
9 death of the member.

10 (5) Estimated and finalized benefit payments must be issued as provided in rules adopted by the board.

11 (6) With respect to the defined contribution plan, the board shall adopt rules regarding the  
12 commencement of benefits that are consistent with applicable provisions of the Internal Revenue Code and its  
13 implementing regulations."  
14

15 **Section 4.** Section 19-3-412, MCA, is amended to read:

16 **"19-3-412. Optional membership.** (1) Except as provided in 5-2-304 and subsection (2) of this section,  
17 the following employees and elected officials in covered positions shall elect either to become active members  
18 of the retirement system or to decline this optional membership by filing an irrevocable, written application with  
19 the board in the manner prescribed in subsection (3):

20 (a) elected officials of the state or local governments, including individuals appointed to fill the unexpired  
21 term of elected officials, who:

22 (i) are paid on a salary or wage basis rather than on a per diem or other reimbursement basis; or

23 (ii) were members receiving retirement benefits under the defined benefit plan or a distribution under the  
24 defined contribution plan at the time of their election;

25 (b) employees serving in employment that does not cumulatively exceed a total of 960 hours of covered  
26 employment with all employers under this chapter in any fiscal year;

27 (c) employees directly appointed by the governor;

28 (d) employees working 10 months or less for the legislative branch to perform work related to the  
29 legislative session;

30 (e) the chief administrative officer of any city or county;



1 (f) employees of county hospitals or rest homes.

2 (2) A member who is elected to a local government position in which the member works less than 960  
3 hours in a calendar year may, within 180 days of being elected, decline optional membership with respect to the  
4 member's elected position.

5 (3) (a) The board shall prescribe the form of the written application required pursuant to subsection (1)  
6 and provide written application forms to each employer.

7 (b) Each employee or elected official in a position covered under subsection (1) shall obtain the written  
8 application form from the employer and complete and return it to the board.

9 (c) The written application must be filed with the board:

10 (i) for an employee described in subsection (1)(d), within 300 days of the commencement of the  
11 employee's employment; and

12 (ii) for an employee or elected official described in subsection (1)(a), (1)(b), (1)(c), (1)(e), or (1)(f), within  
13 180 days of the commencement of the employee's or elected official's employment.

14 (d) The employer shall retain a copy of the employee's or elected official's written application.

15 (4) If the employee or elected official fails to file the written application required under subsection (1) with  
16 the board within the time allowed in subsection (3), the employee or elected official waives membership.

17 (5) An employee or elected official who declines optional membership may not receive membership  
18 service or service credit for the employment for which membership was declined.

19 (6) ~~(a) An~~ Except as provided in subsection (6)(b), an employee or elected official who declined optional  
20 membership but later becomes a member may purchase service credit for the period of time beginning with the  
21 date of employment in which membership was declined to the commencement of membership. Purchase of  
22 service credit pursuant to this subsection must comply with 19-3-505.

23 (b) A retired member who is also a legislator who retired pursuant to [section 1] or who declined optional  
24 membership pursuant to 5-2-304 but later becomes an active member may not purchase service credit for the  
25 period of time described in [section 1(3)(a)].

26 (7) Except as provided in [section 1] and subsection (2) of this section, membership in the retirement  
27 system is not optional for an employee or elected official who is already a member. ~~Upon~~ Except as provided in  
28 [section 1], upon employment in a position for which membership is optional:

29 (a) a member who was an active member before the employment remains an active member;

30 (b) a member who was an inactive member before the employment becomes an active member; and

(c) a member who was a retired member before the employment is subject to [section 1(3)], subsection (6) of this section, and part 11 of this chapter.

(8) (a) An employee or elected official who declines membership for a position for which membership is optional may not later become a member while still employed in that position.

(b) If, after a break in service of 30 days or more, an employee who was employed in an optional membership position is reemployed in the same position or is employed in a different position for which membership is optional, the employee shall again choose or decline membership.

(c) If the break in service is less than 30 days, an employee who declined membership is bound by the employee's original decision to decline membership.

(9) An employee accepting a position that requires membership must become a member even if the employee previously declined membership and did not have a 30-day break in service."

**Section 5.** Section 19-3-1106, MCA, is amended to read:

**"19-3-1106. Limited reemployment -- reduction of service retirement benefit upon exceeding limits -- exceptions.** (1) A retired member under 65 years of age who is receiving a service retirement benefit or early retirement benefit may return to employment covered by the retirement system for a period not to exceed 960 hours in any calendar year without returning to active service and without any effect to the retiree's retirement benefit. The retirement benefit for any retiree exceeding this 960-hour limitation in any calendar year after retirement must be temporarily reduced \$1 for each \$1 earned after working 960 hours in that calendar year.

(2) A retiree 65 years of age or older who returns to employment covered by the retirement system is either subject to the 960-hour limitation of subsection (1) or may earn in any calendar year an amount that, when added to the retiree's current annual retirement benefits, will not exceed the member's annualized highest average compensation, adjusted for inflation as of January 1 of the current calendar year, whichever limitation provides the higher limit on earned compensation to the retiree. Upon reaching the applicable limitation, the retiree's benefits must be temporarily reduced \$1 for each \$1 of compensation earned in service beyond the applicable limitation during that calendar year.

(3) A retiree returning to employment covered by the retirement system and the returning employee's employer shall certify to the board the number of hours worked by the retiree and the gross compensation paid to the retiree in that employment during any month after retirement.

(4) ~~A~~ Subject to the provisions of [section 1] and 19-3-412(6), a retiree returning to employment covered

1 by the retirement system may elect to return to active membership at any time during this period of covered  
2 employment.

3 (5) The following members who return to employment covered by the retirement system are not subject  
4 to the hour or earnings limitations in subsections (1) and (2) or the reporting requirements in subsection (3):

5 (a) a retired member who is 70 1/2 years of age or older; or

6 (b) an elected official in a covered position who declines optional membership as provided in 19-3-412.

7 (6) For the purposes of this section, "employment covered by the retirement system" includes work  
8 performed by a retiree through a professional employer arrangement, an employee leasing arrangement, or a  
9 temporary service contractor as those terms are defined in 39-8-102."

10  
11 **Section 6.** Section 19-7-1101, MCA, is amended to read:

12 **"19-7-1101. Reemployment of retired member.** (1) ~~A~~ Subject to [section 1], a retired member who  
13 returns to service for 480 hours or more in a calendar year must become an active member of the system. Upon  
14 reinstatement as an active member, benefit payments must cease until subsequent retirement.

15 (2) A retired member who returns to service for less than 480 hours in a calendar year may not become  
16 an active member. The retirement benefit of a retired member employed in service must be reduced by \$1 for  
17 each \$3 earned in excess of \$5,000 in a calendar year."

18  
19 **Section 7.** Section 19-13-301, MCA, is amended to read:

20 **"19-13-301. Active membership -- inactive vested member -- inactive nonvested member.** (1)  
21 Except as provided in subsection (7) of this section and subject to [section 1(3)], a full-paid firefighter becomes  
22 an active member of the retirement system:

23 (a) on the first day of the firefighter's service with an employer;

24 (b) on July 1, 1981, if the firefighter is employed by an employer on that date; or

25 (c) in the case of an employer who elects to join the retirement system, as provided in 19-13-211, on the  
26 effective date of the election if the firefighter is employed by the employer on that date.

27 (2) Upon becoming eligible for membership, the firefighter shall complete the forms and furnish any proof  
28 required by the board.

29 (3) A part-paid firefighter may elect to become a member of the retirement system by filing a membership  
30 application with the board within 6 months of becoming a part-paid firefighter.

(4) An active member becomes an inactive member upon the occurrence of the earliest of the following:

(a) the date on which the member ceases service with an employer;

(b) the 31st day of an approved absence from active duty with an employer; or

(c) the date on which the member ceases to be employed because of a reduction of the number of firefighters in the fire department as provided in 7-33-4125.

(5) (a) An inactive member with at least 5 years of membership service is an inactive vested member and retains the right, subject to [section 1(3)], to purchase service credit and to receive a retirement benefit under the provisions of this chapter.

(b) If an inactive vested member chooses to take a lump-sum payment rather than a retirement benefit, the lump-sum payment consists of only the member's accumulated contributions and not the employer's contributions.

(6) (a) An inactive member with less than 5 years of membership service is an inactive nonvested member and is not eligible for any benefits from the retirement system.

(b) An inactive nonvested member is eligible only for a refund of the member's accumulated contributions.

(7) (a) A firefighter previously employed in a position covered under the public employees' retirement system and who is first hired into a position covered under the firefighters' unified retirement system after attaining 45 years of age may elect to remain in the public employees' retirement system.

(b) A firefighter making an election to remain in the public employees' retirement system shall make the election in a manner prescribed by the board within 30 days of being hired into the position otherwise covered under the firefighters' unified retirement system.

(8) A retired member who is receiving a service retirement benefit or early retirement benefit may return to employment covered by the retirement system for a period not to exceed 480 hours in any calendar year without returning to active service and without any effect to the retiree's retirement benefit."

**NEW SECTION. Section 8. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 19, chapter 2, part 10, and the provisions of Title 19, chapter 2, part 10, apply to [section 1].

- END -